

OFFICE OF THE ATTORNEY GENERAL ⁸⁶⁻⁰⁰⁰³⁰



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Municipalities - Utility Boards -
City Councilmen - Compensation

Councilmembers serving on Utility
Board of Rainbow City are
entitled to statutory fees
(compensation), and all board
members may be reimbursed for
actual expenses.

Dear Mr. Turnbach:

The opinion request of the Utilities Board of Rainbow City
has been received in the Office of the Attorney General. Your
request presents the following information:

On August 2, 1950, a Certificate of Incorporation of
the Water Works Board of the Town of Rainbow City was
executed and thereafter filed with the Probate
Judge's Office in Etowah County. The body was
incorporated pursuant to Title 37, Section 394 to 402
of the Code of Alabama, 1940, as amended. Thereafter
on January 22, 1953, an amendment to the Certificate
was filed changing the name of The Water Works and
Gas Board of the Town of Rainbow City. During June,
1968, the name of the corporation was again amended,
pursuant to Section 394 to 402 of Title 37 Code of
Alabama, 1940, as amended. The name was changed to
The Water Works, Gas and Sewer Board of the Town of
Rainbow City. During November, 1977, pursuant to
Section 11-50-310 of the Code of Alabama, 1975, the
name was again changed to The Utilities Board of the
City of Rainbow City. I am enclosing herewith a copy

of this particular document recorded in Corporate Record 8-327, Probate Office, Etowah County, Alabama.

In 1979, Act 79-594 was enacted by the Legislature of Alabama. This particular Act amended Section 1 of Act 430, 1973, Regular Session. Act 79-594 established a compensation schedule for the Chairman and the Board Members of the Rainbow City Gas, Water and Sewer Board. I am enclosing herewith for your reference a copy of this particular Act.

Section 11-50-234.1 provides authorization for the payment of reasonable meeting expenses of the Board of Directors of Water Works or Sewer Boards.

As a final fact element for consideration, the Board of Directors of The Utilities Board of the City of Rainbow City was increased from three (3) to five (5) members. This increase was accomplished in 1983.

At the present time the Utility Board has five (5) members, three (3) of whom incidentally serve as council persons on the City Council of the City of Rainbow City.

The Utility Board of the City of Rainbow City was originally incorporated under the provisions of Code of Alabama 1975, § 11-50-230 (formerly Tit. 37, § 394, Code of Alabama 1940). In 1977, pursuant to the authority found in Code of Alabama 1975, § 11-50-324, the Utilities Board although originally organized under the provisions of Code of Alabama 1975, § 11-50-230, et seq., appears to have amended its certificate of incorporation so as to be governed by the provisions of Code of Alabama 1975, § 11-50-310, et seq. Act 85-___ (H.B. 14) has amended Code of Alabama 1975, § 11-50-313 to provide that any officer of the municipality serving on the board of directors may receive a fee for his services provided it is first approved by the board of directors.

Your question is stated as follows:

What "compensation" can be paid to the members of the Board of Directors of the Utility Board? If no "compensation" may be paid to the Board Members who are also serving as council persons, may the council person still receive the "reasonable meeting expense allowance" provided under § 11-50-234.1?

Compensation to all members of a Board of Directors organized under the provisions of Code of Alabama 1975, § 11-50-310, et seq., can be paid at the rate set by statute. See Code of Alabama 1975, § 11-50-15, a general statute, which sets forth the current maximum fees which may be paid to directors of utility boards. It appears from the facts presented that the Board is currently operating under the provisions of Code of Alabama 1975, § 11-50-310, et seq. (November, 1977 amendment to Certificate of Incorporation), but this is a factual question on which this office can make no binding finding. Furthermore, Act 79-594, a local act, which sets compensation for Board members is perhaps open to a constitutional challenge, but such a challenge must be made in a court of competent jurisdiction. Once this factual determination is made, the appropriate compensation can be determined from the appropriate statute.

Any question regarding increase in compensation as it relates to municipal officials who also serve as board members should be addressed directly to the State Ethics Commission.

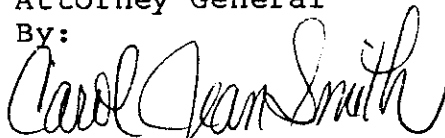
Again, it appears that Code of Alabama 1975, § 11-50-234.1 is not currently applicable to the operations of the Utilities Board although as noted above, such a determination is not conclusively made by this office. Code of Alabama 1975, §§ 11-50-310 et seq., makes no specific mention of an expense allowance for Board members. Therefore, it is the opinion of this office that only actual expenses incurred while attending to Board business may be reimbursed. All Board members, whether or not they are members of the council, would be entitled to such reimbursement.

I do hope that this response sufficiently answers your inquiry. If, however, we may be of further service, please do not hesitate to contact us.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By:



CAROL JEAN SMITH
Assistant Attorney General